House of Representatives

General Assembly

File No. 693

January Session, 2013

Substitute House Bill No. 6658

House of Representatives, May 2, 2013

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING EMPLOYER USE OF NONCOMPETE AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2013*) (a) As used in this section:

(1) "Employee" means any person engaged in service to an employer in the business of the employer; and

(2) "Employer" means a person engaged in business who has employees, including the state and any political subdivision thereof.

(b) Except as provided in section 31-50a or 31-50b of the general statutes, an employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if (1) the agreement or covenant is reasonable as to its duration,

geographical area, and the type of employment or line of business, and (2) prior to entering into the agreement or covenant, the employer provides the employee a reasonable period of time, of not less than ten business days, to seek legal advice relating to the terms of the agreement or covenant.

(c) Any person who is aggrieved by a violation of this section may bring a civil action in the Superior Court to recover damages, together with court costs and reasonable attorney's fees. To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement or covenant to render it reasonable in light of the circumstances in which it was entered into and specifically enforce the agreement or covenant as limited.

(d) The provisions of this section shall apply to agreements or covenants entered into, renewed or extended on or after October 1, 2013.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2013*	New section

Statement of Legislative Commissioners:
In section 1(c), "a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited" was changed to "a court may limit the agreement or covenant to render it reasonable in light of the circumstances in which it was entered into and specifically enforce the agreement or covenant as limited" for consistency.

JUD *Joint Favorable Subst. -LCO*

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill codifies Connecticut common law regarding noncompete agreements and does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 6658

AN ACT CONCERNING EMPLOYER USE OF NONCOMPETE AGREEMENTS.

SUMMARY:

This bill generally codifies Connecticut common law by setting certain restrictions on employers' use of noncompete agreements or covenants. Such an agreement or covenant expressly prohibits the employee from engaging in certain employment or a line of business after termination of employment to protect the employer's reasonable competitive business interests. The bill applies to businesses with employees, the state, and its political subdivisions.

Under the bill, for an agreement or covenant to be valid:

1. as under common law, it must be reasonable in its duration, geographical scope, and the type of employment or line of business it prohibits; and

2. before entering into the agreement or covenant, the employer must provide the employee at least 10 business days, and more if reasonable, to seek legal advice relating to the agreement's or covenant's terms.

The bill allows a party aggrieved by a violation of its provisions to bring a civil action for damages, court costs, and reasonable attorney's fees. As under common law, if the court finds an agreement or covenant to be unreasonable in some aspect, the bill allows a court to limit the agreement or covenant to make it reasonable and enforce the limited agreement or covenant. In that situation, the court considers what would have been reasonable in light of the circumstances in which the agreement or covenant was made.

The bill applies to agreements and covenants made, renewed, or extended on or after October 1, 2013.

The bill does not affect current statutory law regarding noncompete agreements or covenants for security guards and broadcast employees (see BACKGROUND).

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Common Law Regarding Noncompete Agreements

A noncompete agreement or covenant is considered a restrictive covenant under common law (*Scott v. General Iron & Welding Co., Inc.* 171 Conn. 132 (1976)). The factors courts currently use to evaluate whether a particular restrictive employment covenant is reasonable are (1) the length of time the restriction operates, (2) the geographical area covered, (3) the fairness of the protection afforded the employer, (4) the extent of the restraint on the employee's opportunity to pursue his occupation, and (5) the extent of interference with the public interest. Under current court standards, a covenant must apply for a definite and reasonable time period and cover a geographical area that fairly protects both parties.

The case of *Gartner Group, Inc. v Mewes* (No. CV 91 0118332, Conn. Super. (January 3, 1992)) illustrates how courts deal with restrictive covenants. In the case, a one-year bar against competing anywhere the former employer does business was found to be unreasonable and unenforceable. The employee was the vice president of market development for a large, multinational information technology consulting firm headquartered in Connecticut. A separate provision applying the agreement only to the states of Connecticut, Massachusetts, and New York was found reasonable and enforceable.

Statutory Law Regarding Noncompete Agreements

Existing statutory law restricts the terms and enforcement of noncompete agreements for security guards and broadcast employees (CGS §§ 31-50a & b, respectively). Generally, an employer cannot

restrict a security guard from working for another employer at the same location through the use of a noncompete agreement unless the employer proves that the guard obtained the employer's trade secrets during his or her employment. And, generally, broadcast television and radio industry employers cannot:

1. restrict an employee's right to work for a certain period of time within a certain geographical area after his or her present employment contract expires;

2. require an employee to disclose any offers he or she receives for alternative employment after the present employment is terminated; or

3. require an employee to accept future or continuing employment with the employer on the same terms as an alternative offer for employment.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 44 Nay 0 (04/16/2013)